



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2020-0703; FRL-8837-02-R3]

**Approval and Promulgation of Air Quality Implementation Plans;
District of Columbia; Regional Haze State Implementation Plan for the Second
Implementation Period and Reasonably Available Control Technology for Major
Stationary Sources of Nitrogen Oxides; Technical Amendment**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a regional haze state implementation plan (SIP) revision submitted by the District of Columbia (“the District” or “DC”) through the Department of Energy and Environment (DOEE) on November 8, 2019, as satisfying applicable requirements under the Clean Air Act (CAA) and EPA’s Regional Haze Rule (RHR) for the program’s second implementation period. The District’s SIP submission addressed the requirement that states must periodically revise their long-term strategies for making reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility in mandatory Class I Federal Areas, including regional haze. EPA is taking this action pursuant to sections 110 and 169A of the CAA. EPA is also correcting an error in the citations in our previous final approval of the District’s revision to the Reasonably Available Control Technology for Major Stationary Sources of Nitrogen Oxides Rule (“DC NO_x RACT rule”) according to our authority under section 110(k)(6) of the CAA.

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-

R03-OAR-2020-0703. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Keila M. Pagán-Incle, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2926. Ms. Pagán-Incle can also be reached via electronic mail at pagan-incle.keila@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On April 15, 2021, EPA published a notice of proposed rulemaking (NPRM) for the District. 86 FR 19793. The NPRM proposed approval of DC's regional haze plan for the second implementation period ("DC DOEE 2019 Regional Haze SIP submission"), which runs through 2028.

In the 1977 CAA amendments, Congress created a program for protecting visibility in the nation's mandatory Class I Federal areas, which include certain national parks and wilderness areas.¹ 42 U.S.C 7491. The CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas

¹ Areas statutorily designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). There are 156 mandatory Class I areas. The list of areas to which the requirements of the visibility protection program apply is in 40 CFR part 81, subpart D.

which impairment results from manmade air pollution”,² and directs EPA to promulgate regulations to assure reasonable progress toward meeting this national goal. 42 U.S.C. 7491(a)(4). On July 1, 1999, EPA promulgated the RHR, which is codified at 40 CFR 51.308.³ See 64 FR 35714. Additional background and information about regional haze and the regional haze program is included in the April 15, 2021 proposal. 86 FR 19793.

To address regional haze visibility impairment, the 1999 RHR established an iterative planning process that requires states in which Class I areas are located and states “the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility” in a Class I area to periodically submit SIP revisions to address regional haze visibility impairment. 42 U.S.C. 7491(b)(2); 40 CFR 51.308(b) and (f); see also 64 FR 35768 (July 1, 1999). Under the CAA, each SIP submission must contain “a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal.” 42 U.S.C. 7491(b)(2)(B). States’ first regional haze SIP submissions were due by December 17, 2007, 40 CFR 51.308(b), with subsequent SIP submissions containing revised long-term strategies originally due July 31, 2018, and every ten years thereafter. 64 FR 35768.

On January 10, 2017, EPA promulgated revisions to the RHR that apply for the second and subsequent implementation periods. 82 FR 3078. The revisions to the regional haze program focused on the requirement that States’ SIPs contain long-term strategies for making reasonable progress towards the national visibility goal. Among other changes relative to the first period requirements, the 2017 RHR Revisions adjusted the deadline for States to submit their second-implementation-period SIP revisions from July 31, 2018 to July 31, 2021, clarified the order of analysis and the relationship between the reasonable progress goals (RPGs) and the long-term strategy, and focused on making visibility improvements on the days with the most

² 42 U.S.C. 7491(a)(1)

³ In addition to the generally applicable regional haze provisions at 40 CFR 51.308, EPA also promulgated regulations specific to addressing regional haze visibility impairment in Class I areas on the Colorado Plateau at 40 CFR 51.309. The latter regulations are applicable only for specific jurisdictions’ regional haze plans submitted no later than December 17, 2007, and thus are not relevant here.

anthropogenic visibility impairment, as opposed to the days with the most visibility impairment overall. EPA has issued several guidance documents relevant to SIP development for the second implementation period, including the August 2019 “Guidance on Regional Haze State Implementation Plans for the Second Implementation Period” (“2019 Guidance”).⁴

Because the air pollutants and pollution affecting visibility in Class I areas can be transported over long distances, successful implementation of the regional haze program requires long-term, regional coordination among multiple jurisdictions and agencies that have responsibility for Class I areas and the emissions that impact visibility in those areas. In order to address regional haze, states need to develop strategies in coordination with one another, considering the effect of emissions from one jurisdiction on the air quality in another. Five regional planning organizations (RPOs), which include representation from state and tribal governments, EPA, and federal land managers (FLMs), were developed in the lead-up to the first implementation period to address regional haze. RPOs evaluate technical information to better understand how emissions from state and tribal land impact Class I areas across the country, pursue the development of regional strategies to reduce emissions of particulate matter and other pollutants leading to regional haze, and help states meet the consultation requirements of the RHR.

One of the five RPOs described above is the Mid-Atlantic/Northeast Visibility Union (MANE-VU). MANE-VU is a collaborative effort of state governments, tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the Mid-Atlantic and Northeast corridor of the United States. The District, as well as other states and tribal governments along the Mid-Atlantic and Northeast corridor, are members of MANE-VU.

EPA published a final rule fully approving the DC regional haze SIP submission for the

⁴ Guidance on Regional Haze State Implementation Plans for the Second Implementation Period. Available at: <https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period> EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019).

first implementation period on February 2, 2012 (77 FR 5191), and approved a five-year progress report as a SIP revision into the DC SIP on August 10, 2017 (82 FR 37305). On November 8, 2019, the District submitted another SIP revision, developed with the technical information from MANE-VU, to address the jurisdiction's regional haze obligations for the second implementation period, which runs through 2028. On April 15, 2021, EPA proposed to approve the DC DOEE 2019 Regional Haze SIP submission as meeting the applicable statutory and regulatory requirements. 86 FR 19793.

In the April 15, 2021 publication, EPA also proposed to correct an error in the citations of the regulatory provisions in a previous action—the final rule (FR) and identification of plan of the DC NO_x RACT rule (February 24, 2020, 85 FR 10295)—according to our authority to make corrections to prior SIP actions under Section 110(k)(6) of the CAA. As we noted in the NPRM, the DC DOEE 2019 Regional Haze SIP submission relies in part on this rule.

II. Summary of SIP Revision and EPA Analysis

Under the CAA and EPA's regulations, each state, including the District, must include in its SIP a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal of remedying any existing and preventing any future anthropogenic visibility impairment in Class I areas. 42 U.S.C. 7491(b)(2)(B). To this end, 40 CFR 51.308(f) lays out the process by which states determine what constitutes their long-term strategies, with the order of the requirements in 40 CFR 51.308(f)(1) through (3) generally mirroring the order of the steps in the reasonable progress analysis and (f)(4) through (6) containing additional, related requirements. In addition, the SIP submissions for the second implementation period must address the requirements in 40 CFR 51.308(g)(1) through (5) pertaining to periodic reports describing progress towards the RPGs, 40 CFR 51.308(f)(5), as well as requirements for FLM consultation that apply to all visibility protection SIPs and SIP revisions. 40 CFR 51.309(i).

As discussed in the April 15, 2021 (86 FR 19793) NPRM, in accordance with CAA sections 169A and the RHR at 40 CFR 51.308(f), on November 8, 2019, DC DOEE submitted a

revision to the DC SIP to address the jurisdiction's regional haze obligations for the second implementation period. The revision included the analyses conducted by MANE-VU and the District's determinations based on those analyses; the District's long-term strategy for making reasonable progress; and the District's assessment of progress made since the first implementation period in reducing emissions of visibility impairing pollutants and the visibility improvement progress at nearby Class I areas. EPA evaluated the District's submission against the requirements of the CAA and RHR for the second implementation period of the regional haze program. The following is a summary of selected components of the District's SIP submission; EPA's full evaluation of the complete submission against all applicable regional haze requirements for the second implementation period is contained in Section IV of the April 15, 2021 NPRM.

The core component of a regional haze SIP submission is a long-term strategy that addresses regional haze in each Class I area within a state's borders and each Class I area that may be affected by emissions from the state. The long-term strategy "must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to [40 CFR 51.308](f)(2)(i) through (iv)." 40 CFR 51.308(f)(2). The amount of progress that is "reasonable progress" is determined by applying the four statutory factors in CAA section 169A(g)(1) in an evaluation of potential control options for sources of visibility impairing pollutants, which is referred to as a "four-factor" analysis. The RHR refers to the controls identified pursuant to a four-factor analysis as "emission reduction measures," see 40 CFR 51.308(f)(2)(i); these measures represent the level of emissions that a particular source or group of sources need to achieve to make reasonable progress towards the national visibility goal. States' SIPs must include "enforceable emissions limitations, compliance schedules, and other measures" (i.e., any compliance tools) for the emission reduction measures they have determined are necessary to make reasonable progress pursuant to four-factor analysis. 40 CFR 51.308(f)(2).

MANE-VU's strategy, on which the District relied to satisfy its requirements for the second implementation period, included a combination of (1) measures for certain source sectors and groups of sources that the RPO determined were reasonable for states to pursue, and (2) a request for member states to conduct four-factor analyses for individual sources that it identified as contributing to visibility impairment. MANE-VU developed a set of emissions reduction measures for making reasonable progress in the five MANE-VU Class I areas. MANE-VU refers to each of the components of its overall strategy as an "Ask" of its member states. The District's submission discussed each of the Asks and explained why or why not each is applicable and how it has complied with the relevant components of the emissions control strategy MANE-VU has laid out for its states. A detailed description about the District's response to the six MANE-VU Asks and EPA's evaluation of the District's responses and compliance with 40 CFR 51.308(f)(2)(i) can be found in Section IV. E. of the April 15, 2021 NPRM.

The NPRM also sets out at length the other requirements in the RHR that the DC DOEE 2019 Regional Haze SIP submission must meet to be approved, EPA's evaluation of the DC DOEE 2019 Regional Haze SIP submission against those requirements, and EPA's conclusion that the District has met its requirements under 40 CFR 51.308 with respect to its regional haze SIP for the second implementation period, the DC DOEE 2019 Regional Haze SIP submission. In particular, EPA evaluated these requirements, as set forth in the NPRM, including: 1) monitoring strategy and other implementation plan requirements; 2) requirements for RPG; and 3) requirements for state and FLM coordination. These other specific requirements of the CAA and EPA's RHR, and the rationale for EPA's proposed action, are more fully explained in the NPRM and will not be restated here.

III. EPA's Response to Comments Received

EPA received one comment supporting our proposed action in the April 15, 2021 NPRM. The comment received is in the docket for this rulemaking action. EPA received no adverse

comments.

IV. Final Action

EPA is approving the revision to the District of Columbia SIP submitted by the District through DC DOEE on November 8, 2019. EPA is approving the District's SIP submission as satisfying the regional haze requirements for the second implementation period.

V. Incorporation by Reference

In addition, EPA is correcting errors in the regulatory citation in our February 24, 2020 (85 FR 10295) final action on the DC NO_x RACT rule and is codifying this correction by revising the appropriate entries under 40 CFR 52.470 (Identification of Plan). EPA approved the District's revision to the DC NO_x RACT rule (20 DCMR 805) into the SIP on February 24, 2020. 85 FR 10295. However, after we finalized the rulemaking, EPA discovered that we had erred in identifying the particular sections of the DC NO_x RACT rule for incorporation by reference into the DC SIP. EPA is amending the table in paragraph (c) of 40 CFR 52.470 to correctly reflect our intended approval of 20 DCMR sections 805.1(a), 805.1(a)(2), 805.4(a), and 805.4(b), described as follows.

EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Amendments to 20 District of Columbia Municipal Regulations (20 DCMR)

Chapter 8, section 805.4:

a. Amending sections 805.4(a)(1) and (2) to set NO_x emission limitations for any stationary combustion turbines with a heat input rating greater than fifty million (50,000,000) BTU per hour;

b. Amending section 805.4(a)(3) to set NO_x emission limitations for certain stationary combustion turbines with a heat input rating less than or equal to fifty million (50,000,000) BTU

per hour;

c. Amending section 805.4(a)(4) to set NO_x emission limitations for certain stationary combustion turbines with a heat input rating less than or equal to ten million (10,000,000) BTU per hour;

d. Amending section 805.4(b) to replace requirements for stationary combustion turbines with an energy input capacity of one hundred million (100,000,000) BTU per hour or greater which is operated for less than five hundred (500) hours per year with testing and continuous monitoring requirements for any person required to comply with section 805.4.

These regulatory changes to section 805 were adopted on November 27, 2018, and effective on the date of publication, December 14, 2018, in the District of Columbia Register (Vol. 65, Number 51, page 013499, December 14, 2018).

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to the District’s regional haze state implementation plan for the second implementation period and correction for the RACT rule for major stationary sources of NOx may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: August 11, 2021.

Diana Esher,
Acting Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

2. Amend § 52.470:

a. In the table in paragraph (c), by revising the entry for “Section 805”; and

b. In the table in paragraph (e), by adding the entry “Regional Haze State Implementation Plan for the Second Implementation Period” at the end of the table.

The revision and addition read as follows:

§ 52.470 Identification of plan.

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(c) * * *

EPA—APPROVED REGULATIONS AND STATUTES IN THE DISTRICT OF COLUMBIA

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
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Chapter 8 Asbestos, Sulfur and Nitrogen Oxides				
* * *	* * *	* * *	* * *	* * *
Section 805	Reasonably Available Control Technology for Major Stationary Sources of Nitrogen Oxides	12/14/2018	[insert date of publication in the Federal Register], [insert Federal Register citation]	Amended 805.1(a), 805.1(a)(2), and 805.4 (a) and (b). Previous approval (see the Federal Register of 2/24/2020) corrected to include accurate citation of amendments to DC NOx RACT rule.
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(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *				
Regional Haze State Implementation Plan for the Second Implementation Period	Statewide	11/8/2019	[insert date of publication in the Federal Register], [insert Federal Register citation]	For the Regional Haze Second Implementation Period

[FR Doc. 2021-17952 Filed: 8/30/2021 8:45 am; Publication Date: 8/31/2021]